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CLERK OF SUPERIOR COURT

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10 Attorneys for Plaintiff Terri Jo Neff

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF COCHISE**

13 TERRI JO NEFF, a single woman,

No.

CV201900323

14 Plaintiff,

**STATUTORY SPECIAL ACTION
COMPLAINT**

15 vs.

16 COCHISE COUNTY; COCHISE COUNTY
17 BOARD OF SUPERIVORS; ARLETHE
18 RIOS, COCHISE COUNTY CLERK,

Assigned to the Hon.

DIV. 3

19 Defendants.

20 Plaintiff, Terri Jo Neff, for her statutory special action Complaint in this matter, alleges,
21 upon information and belief, the following:

22 1. Terri Jo Neff (Plaintiff NEFF) is a citizen of the State of Arizona. She is a resident
23 of Cochise County, Arizona. Plaintiff NEFF works as a freelance journalist. She has researched
24 and written news stories on matters of public interest which have been published in media outlets
25 throughout Southern Arizona.
26

1 2. Cochise County is a political subdivision of the State of Arizona. The Cochise
2 County Board of Supervisors are publicly elected officials pursuant to A.R.S. 11-201.

3 3. Pursuant to A.R.S. § 11-221, the County Clerk is the custodian of the county's
4 records. ARLETHE RIOS (Rios) is the current clerk of the Cochise County Board of
5 Supervisors, and has been so at all times relevant hereto.

6 4. This Court has jurisdiction of this matter. Venue is appropriate in Cochise County,
7 and a statutory special action is appropriate pursuant to A.R.S. § 39-121.02.

8 5. On or about February 12, 2019, the three-member Cochise County Board of
9 Supervisors voted to appoint one of its own members, Pat Call, to fill a vacancy as justice of the
10 peace for Precinct 5 in the county's Sierra Vista Justice Court. The Cochise County Board of
11 Supervisors later ratified its vote due to an issue under the Arizona open meeting law.

12 6. On February 14, 2019, David Welch, a citizen of Precinct 5, initiated a civil action
13 against the Cochise County Board of Supervisors, seeking to void the appointment of Pat Call
14 on various grounds. That case was filed in Cochise County Superior Court as Case No.
15 CV201900060.

16 7. On February 22, 2019, attorney James (Jim) Jellison of the Jellison Law Office
17 filed a Notice of Appearance on behalf of the Cochise County Board of Supervisors in
18 CV201900060. Despite the fact that the Cochise County Attorney is the lawful legal
19 representative of the Cochise County Board of Supervisors, special arrangements were
20 apparently made by the Cochise County Board of Supervisors to retain Mr. Jellison and the
21 Jellison Law Office in that case.

1 8. Plaintiff NEFF has written several articles about the vacancy in Precinct 5 of the
2 Sierra Vista Justice Court, the appointment of Supervisor Call as justice of the peace, and the
3 resulting litigation. As a part of her journalist activities, she attempted to review county records
4 to determine what she believed to be matters of public interest, including: when attorney Jellison
5 was retained; the scope of his engagement; the county official or officials who made the decision
6 to retain him; what the cost would be to Cochise County for retaining attorney Jellison to
7 represent the Cochise County Board of Supervisors; and which county's department budget
8 would be charged with that expense.
9

10
11 9. The expenditure of public funds by county government is a matter of significant
12 public interest. That public interest is best served when the public can be fully informed about
13 the issues that Plaintiff NEFF was attempting to report to the public.
14

15 10. On April 12, 2019, Plaintiff NEFF filed a public records request. That public
16 records request was submitted on the county's website. That public records request sought "any
17 contract or agreement related to legal services provided to the Cochise County by James (Jim)
18 Jellison or the Jellison Law Firm related to litigation about the appointment of Pat Call to justice
19 of the peace." (Exhibit A)
20

21 11. On April 15, 2019, the County Attorney's Office sent an email to Plaintiff NEFF
22 confirming receipt of her public records request along with an electronic image of her request.
23

24 12. On April 17, 2019, the County Attorney's Office, through Deputy County
25 Attorney Christine Roberts, sent Ms. NEFF an email denying access to the Jellison contract.
26 Roberts' email stated "... any agreement between attorney Jim Jellison and Cochise County to
provide legal services is not subject to disclosure."

1 13. On April 17, 2019, Plaintiff NEFF replied via email requesting authority for the
2 denial of the request.

3 14. Still later on April 17, 2019, Ms. Roberts responded via email stating that A.R.S.
4 § 12-2234 "makes attorney-client privileged communications 'confidential.'" Attached to her
5 email were four PDF files with case law from other jurisdictions.
6

7 15. On June 2, 2019, Plaintiff NEFF again emailed the Cochise County Clerk about
8 the April 12, 2019 request to review the contract regarding the retention of attorney Jellison and
9 the Jellison Law Firm.
10

11 16. On June 12, 2019, Plaintiff NEFF received another email from the County
12 Attorney's Office, denying access to the Jellison contract as "a privileged and confidential
13 document."
14

15 17. Under settled Arizona law, the fact that a client has retained an attorney, the
16 identity of the client, the dates and number of visits to the attorney are outside the scope and
17 purpose of the attorney-client privilege. *State Farm Mutual Insurance Company v. Lee*, 199 Ariz.
18 52, 6613 P.3d 1169, 1183 (Sup. 2000); *Granger v. Wisner*, 134 Ariz. 377, 380, 656 P.2d 1238,
19 1241 (1982).
20

21 18. The amount of fees charged by attorney Jellison for his services, such as his hourly
22 fee, is clearly a matter of public concern. Moreover, simply revealing the amount of fees charged
23 cannot possibly reveal attorney-client privileged information, the strategies to be pursued by
24 attorney Jellison, or his work product.
25
26

1 19. Under Arizona law, there is a strong presumption in favor of disclosure of all
2 public records. *Star Publishing Co. v. Pima County Attorney's Office*, 181 Ariz. 432, 434, 891
3 P.2d 899, 901 (Div 2, 1994).

4
5 20. The contract between the Cochise County Board of Supervisors and the Jellison
6 Law Firm to retain that law firm to represent Cochise County in civil matter CV201900060, is
7 a public record.

8 21. In the event that Cochise County and/or the Cochise County Clerk or County
9 Attorney believed that portions of the contract were not subject to disclosure under the Arizona
10 public records law, Arizona law requires that they disclose the portions of the contract that are
11 subject to disclosure, and seek an *in camera* inspection concerning the portions that they believe
12 are privileged. *KPNX-TV v. Superior Court*, 183 Ariz. 589, 594, 905 P.2d 598, 603 (Div. 1,
13 1995).

14
15 22. The Cochise County Clerk and Cochise County Board of Supervisors have not
16 disclosed the contract or any portion thereof, in violation of the Arizona public records law.

17
18 WHEREFORE, Plaintiff NEFF requests that this Court order the following relief:

- 19 A. Order that the Cochise County Board of Supervisors and its clerk immediately
20 provide the contract responsive to Plaintiff NEFF's Public Records Request dated
21 April 12, 2019;
22
23 B. Award damages to Plaintiff NEFF;
24
25 C. Award Plaintiff NEFF her legal costs, including reasonable attorneys' fees
26 pursuant to A.R.S. §39-121 *et seq.*, and other applicable law; and
 D. Such other and further relief as this Court shall deem appropriate.

1 RESPECTFULLY SUBMITTED this 26th day of July, 2019.

2 MICHAEL J. BLOOM, P.C.

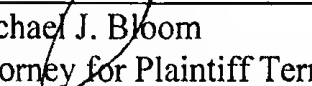
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5 _____
6 Michael J. Bloom
7 Attorney for Plaintiff Terri Jo Neff
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EXHIBIT A

Maria C. Chavez R.

From: Terri Jo Neff
Sent: Wednesday, July 24, 2019 3:02 PM
To: Maria C. Chavez Romero
Subject: Fw: Form submission from: Public Records Inspection and Copy Request Form

Terri Jo Neff
CJW Media
520-508-3660

----- Forwarded Message -----

From: Townsend, Debora <DTownsend@cochise.az.gov>
To: Terri Jo Neff <cjw_media@yahoo.com>
Cc: Johnson, Tiffany <tjohnson@cochise.az.gov>
Sent: Monday, April 15, 2019, 9:03:01 AM MST
Subject: RE: Form submission from: Public Records Inspection and Copy Request Form

Ms. Neff,

Your records request has been received and forward to the correct department for processing. Thank you for your patience.

Sincerely,

Debora Townsend

Legal Secretary III

Public Records Request Coordinator

Cochise County Attorney's Office

Civil Section

P.O. Drawer CA

Bisbee, AZ 85603

Phone: (520) 432-8757

Fax: (520) 432-8778

From: Terri Jo Neff <cjw_media@yahoo.com>
Sent: Friday, April 12, 2019 2:46 PM
To: Townsend, Debora <DTownsend@cochise.az.gov>
Subject: Form submission from: Public Records Inspection and Copy Request Form

Submitted on Friday, April 12, 2019 - 2:46pm

Submitted by user:

Submitted values are:

Date Submitted: 4/12/2019

Name of Requesting Party: Terri Jo Neff

Full Address (to include City, State, and Zip): CJW Media 1081 N Tequila Trail Benson AZ 85602

Telephone number: 5205083660

Email Address: cjw_media@yahoo.com

Indicate with specificity the record(s) you wish to have copied or reproduced. Provide date(s) if possible.

I am requesting to VIEW any contract or agreement related to legal services provided to Cochise County by James "Jim" Jellison or Jellison Law related to litigation about the appointment of Pat Call to justice of the peace.

I am requesting to VIEW any invoice or other such payment demand submitted by Mr. Jellison or his law firm related to the Pat Call litigation, whether such demand has been paid or not.

I am requesting to VIEW any record that will show what funds have been paid to Mr. Jellison or his law firm as of April 12. This could include copy of check or ACH payment order, or simply an accounting line item showing the payments.

Thanks!

Non-Commercial/Commercial Purpose Will not be used for commercial purpose.

Give brief explanation

The specific information which will be utilized from the record(s) requested is:

Which will be used for sale or resale to (Identify Market and Price)

Describe document or material and price:

Which will be used for solicitation to (Identify Market for What and Price)

Which will be used for soliciting a business or commercial relationship. Describe and give price or value: